

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-017719

09/22/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

ALIF Y SARAH

CHARLES E BURI

v.

ARIZONA STATE MEDICAL BOARD

DEAN E BREKKE

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by an administrative agency,² but must only determine if there is any competent evidence to sustain the decision.³ The scope of review of an agency determination under

¹ *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

³ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona*

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-017719

09/22/2003

administrative review places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary, capricious, or involved an abuse of discretion.⁴ The reviewing court may not substitute its own discretion for that exercised by an administrative hearing officer,⁵ but must only determine if there is any competent evidence to sustain the decision.⁶

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings and the Memoranda submitted.

The facts of this case are not disputed. Plaintiff, Alif Y. Sarah, is a medical doctor licensed to practice in the State of Arizona. Defendant, The Arizona Medical Board (hereinafter "the Board"), is responsible for regulating the practice of medicine in the State of Arizona. On December 18, 1998, Plaintiff was charged with soliciting prostitution, a misdemeanor. On March 29, 2000, a Tucson City Court jury found Plaintiff guilty of the charge. The Board was advised of Plaintiff's conviction and requested that Plaintiff appear before a committee of the Board, for a formal interview, on February 8, 2002. At the interview, Plaintiff admitted his conviction of soliciting prostitution. The board deliberated and found that Plaintiff's conduct constituted "unprofessional conduct" pursuant to A.R.S. §32-1401(25)(d),⁷ and issued Plaintiff a Letter of Reprimand. A.R.S. §32-1401(25)(d) reads in relevant part:

"Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(d) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

[emphasis added]

Plaintiff filed a Motion for Rehearing and/or Review on May 30, 2002. On August 8, 2002, the Board denied the motion. Plaintiff now seeks judicial review of the administrative decision.

The first issue before this court is whether the Letter of Reprimand issued to Plaintiff contained an error of law. Plaintiff incorrectly argues that while solicitation of prostitution *can* be a crime of moral turpitude, this court *should* follow California courts and consider contemporary moral standards, the motivation of the offender, and the degree of public harm.⁸

State Board of Accountancy, 14 Ariz.App. 432, 484 P.2d 201 (1971).

⁴ *Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980); *Sundown Imports, Inc.*, at 431, 565 P.2d at 1292.

⁵ *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. at 145, 546 P.2d at 1154.

⁶ *Schade*, 109 Ariz. at 398, 510 P.2d at 44; *Welsh*, 14 Ariz.App. 432, 484 P.2d 201.

⁷ Now A.R.S. §32-1401(26)(d).

⁸ *Henry H. v. Board of Pension Commissioners*, 149 Cal.App.3d 965, 976, 197 Cal.Rptr. 636, 647 (App. 1983).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-017719

09/22/2003

California law is not controlling in this case, nor is it remotely persuasive. Arizona law is unequivocal in its determination that soliciting another person to commit a sexual offense involves moral turpitude. In *Matter of Koch*,⁹ the court stated:

Judge Koch solicited prostitution under § 23- 52(a)(2) of the Phoenix City Code. This offense appears under Article IV of that code, entitled "Offenses Involving Morals," and is a crime involving moral turpitude.¹⁰

[emphasis added]

Solicitation of another to commit sexual offenses *is* a crime of moral turpitude, and to dispute this fact is to ignore Arizona and Federal court decisions. In *Corstvet v. Boger*,¹¹ a professor's conduct in soliciting sexual activities in a student union restroom was deemed to be a crime of moral turpitude. In *Velez-Lozano v. Immigration and Naturalization Service*,¹² the court determined that solicitation to commit sodomy is a crime of moral turpitude. In *Matter of Alfonzo-Bermudez*,¹³ a resident alien's offer to commit a lewd and indecent act with an undercover officer in a Phoenix restroom was a crime of moral turpitude, leading to the alien's deportation from the United States. The Board did not err in their determination that Plaintiff's crime involved moral turpitude, and the Letter of Reprimand issued to Plaintiff did not contain an error of law.

The second issue Plaintiff raises is whether there was sufficient evidence to support the Board's action. The only evidence the Board needed to make its decision was indisputable - Plaintiff was charged and convicted of solicitation of prostitution, a crime of moral turpitude. Plaintiff admitted the conviction, and further evidence was unnecessary.

Plaintiff's final issue is whether the Letter of Reprimand was excessive. Arizona law is dispositive of this issue. A reviewing court may not substitute its own judgment for that of the board.¹⁴ Nothing in the record, or Arizona law, suggests that the Letter of Reprimand was excessive. After a careful review of the record, it is clear that the Board's determination and Letter of Reprimand are not contrary to law, arbitrary, capricious or an abuse of discretion.

IT IS THEREFORE ORDERED affirming the administrative decision of the Arizona Medical Board.

⁹ 181 Ariz. 352, 890 P.2d 1137 (Ariz. 1995).

¹⁰ *Matter of Koch*, 181 Ariz. at 353, 890 P.2d at 1138.

¹¹ 757 F.2d 223, 23 Ed. Law Rep. 885, 10th Cir.(Okla.)(1985).

¹² 463 F.2d 1305, 150 U.S.App.D.C. 214 (D.C.Cir. 1972).

¹³ 12 I. & N. Dec. 225, Interim Decision (BIA) 1733, 1967 WL 14000 (BIA May 11, 1967).

¹⁴ *Tucson Public Schools, Dist. No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 495 P.2d 861 (App. 1972).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-017719

09/22/2003

IT IS FURTHER ORDERED denying all relief requested by the Plaintiff in his complaint.

IT IS FURTHER ORDERED that counsel for the Defendant lodge an order consistent with this opinion by October 17, 2003.